

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

MARY TOLSON, )  
 ) C.A. No.: K11A-09-007 TJV  
 Appellant, )  
 )  
 v. )  
 )  
 CENTRAL DE COMMUNITY )  
 DRUG & ALCOHOL, )  
 )  
 Appellee. )

*Submitted: April 2, 2012*  
*Decided: July 24, 2012*

Mary Tolson, *Pro Se*.

Lauren Elizabeth Moak, Esq., Young, Conaway, Stargatt & Taylor, Wilmington,  
Delaware. Attorney for Appellee.

*Upon Consideration of Appellant's*  
*Appeal From Decision of the*  
*Unemployment Insurance Appeals Board*  
**AFFIRMED**

**VAUGHN, President Judge**

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**ORDER**

Upon consideration of the parties' briefs and the record of the case, it appears that:

1. The appellant, Mary Tolson ("the claimant"), appeals a decision of the Unemployment Insurance Appeals Board ("the Board") which denied her claim for unemployment benefits. The employer is Central Delaware Committee on Drug and Alcohol Abuse ("the employer"). A Claims Deputy denied the claimant's application for unemployment benefits, finding that she was discharged for just cause. The claimant then appealed to an Appeals Referee. The Appeals Referee reversed the Claims Deputy and found that the claimant was entitled to unemployment benefits. The employer appealed to the Board, which reversed the decision of the Appeals Referee and found that the claimant was disqualified from the receipt of benefits.

2. On May 5, 2011, the claimant was terminated by the employer. She worked as a receptionist at the counseling center at the front desk. Her steno pad was found in her work area, upon the cover of which she had written: "Keep your nose out of s\_\_\_ that doesnt concern you b\_\_\_\_..Your Day Is Coming!...Property of Mary Tolson." I have edited the statement due to its vulgarity. The steno pad also contained work related notes and content within the front cover. The claimant was suspended with pay while the message on the steno pad was investigated. After an investigation, the employer found that the claimant had violated employer policies against threatening or intimidating conduct and wantonly offensive conduct toward superiors or co-employees. The claimant does not deny that she wrote what she wrote on the front cover of her steno pad. She contends, however, that the steno pad was not left out in public for others to see and belonged to her, and was not directed to

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anyone.

3. The claimant testified that the steno pad was not left in a publicly accessible reception area and that it was in a folder in her office. The claimant suspected that the employer's witness, Denise Brown, her supervisor, had been "pittin' and pattin' around in her sh\_\_." Denise Brown was the claimant's supervisor and there were multiple incidents of conflict between the two in the past. The record contains a copy of the front cover of the steno pad. In addition, the record contains the employer's policy, or at least those portions which the employer relied upon in terminating the claimant, which include the following:

Policy #5.001(II)(2)(I) Threatening or intimidating, or attempting to intimidate any superior, subordinate, fellow worker, or client.

Policy #5.001(II)(2)(ff) Wantonly offensive conduct toward superiors, subordinates, co-employees, clients or any member of the public.

4. The record also includes various reprimands that the claimant received during her employment: a letter of reprimand dated March 31, 2009; a Letter of Counseling dated April 2, 2009; a letter regarding time sheet reporting dated June 11, 2009; a follow up memo from Denise Brown dated July 14, 210 regarding the claimant's continued Facebook use at work; a non-compliance of policies and procedures memo dated July 14, 2010 from Denise Brown; an employee improvement plan dated July 20, 2010 from Denise Brown; another non-compliance of policies and procedures dated August 12, 2010 from Denise Brown.

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5. As mentioned, the Appeals Referee found that the employer did not have just cause to terminate the claimant. The Appeals Referee reasoned that no evidence was offered to indicate that the claimant had previously received a final, unequivocal warning that she would be discharged if her behavior continued. The Appeals Referee found that fairness requires the employer to provide a final warning and that the employer failed to establish the existence of a consistently enforced policy of which the claimant was aware. The Appeals Referee noted that the employer did reserve the administrative right to discharge the claimant. The Appeals Referee, however, found that the employer did not meet its burden of establishing willful or wanton misconduct to support discharge for just cause.

6. The Board found that the employer did meet its burden of proving by a preponderance of evidence that the claimant was discharged from employment for just cause. In addition to the evidence in the record at the Appeals Referee level, the Board received additional testimony. There was testimony that the claimant's work area was a public area shared by more than one employee, and all items in that work area were for use by all employees within the area. The claimant had already received a performance improvement plan concerning her "bad attitude and belligerent way of speaking with others." Denise Brown also testified that she grabbed the steno pad and noticed the message. The claimant testified that Brown invaded her office space and searched through her things. The claimant also testified that she paid for the steno pad and brought her own supplies to work. Natalie Edwards testified for the employer and indicated that she had a conversation with the claimant in which she explained to the claimant that she should not bring in her own office supplies and that

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supplies would be provided.

7. On appeal the claimant contends the Board erred as follows: by concluding that the statement on the steno pad was a threat; by failing to consider that the steno pad was personal and not intended to be seen by other staff; by concluding that she was on notice that her conduct would cause her termination; by failing to consider the conduct of the front desk supervisor Denise Brown and that the claimant's conduct was justified in response. The claimant also contends that documents in the record with her signature are fraudulent and were created after her termination and that the Board failed to consider all of the facts.

8. The claimant also alleges the following facts: she did not threaten anyone; Denise Brown habitually went through her personal items and her office; the night before her steno pad was taken she, the claimant, had to call Denise, who had left work with the keys, to return to lock the front window of the building, which was part of the conspiracy of Denise to return to the office to lock up when no one was there and go through the claimant's belongings; Brown stole the steno pad that night and told human resources that she found it; Brown continuously knit picked and was petty toward the claimant and made a paper trial against her; Brown was a vindictive person and caused several front desk workers to be terminated because of her personal and petty issues; there was no investigation regarding the steno pad; the office area all of a sudden became a public area on appeal to the Board, and it was never considered such before; she was not engaged in any quarrels with clients as represented and there was no improvement plan in place for her.

9. The employer contends that the Board's decision was based on

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substantial evidence, was free from legal error, and should be affirmed. The employer further contends that the claimant's arguments essentially dispute the Board's findings of fact and do not provide any valid reason for overturning the Board's decision. It further contends that the claimant was aware of employer's policies and signed the appropriate documents when she began working there. The policies made clear that a violation would result in appropriate disciplinary measures which could include immediate dismissal. The employer further contends that the claimant's conduct violated the policies by her continued display of rude and threatening interactions with employees and clients, and finally her writing the offensive message on the steno pad.

10. The scope of review of findings of the Unemployment Insurance Appeal Board is limited to a determination of whether there was substantial evidence sufficient to support the Board's findings.<sup>1</sup> Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>2</sup> On appeal, the court does not weigh evidence, determine questions of credibility, or make its own factual findings.<sup>3</sup> If there is substantial evidence and no mistake of law, the Board's decision must be affirmed.<sup>4</sup>

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<sup>1</sup> *Unemployment Ins. Appeal Bd. of Dep't of Labor v. Duncan*, 337 A.2d 308, 308-09 (Del. 1975).

<sup>2</sup> *Majaya v. Sojourners' Place*, 2003 WL 21350542, at \*4 (Del. Super. June 6, 2003).

<sup>3</sup> *Id.*

<sup>4</sup> *City of Newark v. Unemployment Ins. Appeal Bd.*, 802 A.2d 318, 323 (Del. Super. 2002).

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11. Pursuant to 19 *Del. C.* § 3314(2)<sup>5</sup>, an employee is ineligible to receive unemployment benefits if he or she has been terminated for just cause.<sup>6</sup> The term “just cause” is defined as a “willful or wanton act in violation of either the employer’s interests, or of the employee’s duties, or of the employer’s expected standard of conduct.”<sup>7</sup> Willful or wanton conduct is “that which is evidenced by either conscious action, or reckless indifference leading to a deviation from established and acceptable workplace performance.”<sup>8</sup> Just cause exists where “an employee has violated an employer’s policy or rule, particularly where the employee received prior notice of the rule through a company handbook or other documentation.”<sup>9</sup>

12. This Court uses a two prong test in determining whether termination for failing to follow a policy constitutes just cause.<sup>10</sup> First, whether a policy existed, and

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<sup>5</sup> 19 *Del. C.* § 3314(2) provides: “An individual shall be disqualified for benefits...[f]or the week in which the individual was discharged from the individual’s work for just cause in connection with the individual’s work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks...”

<sup>6</sup> *Jackson v. Christiana Care*, 2008 WL 555918, at \*2 (Del. Super. Feb. 28, 2008) (citing 19 *Del. C.* § 3314(2)).

<sup>7</sup> *Jackson*, 2008 WL 555918, at \*2 (quoting *Krouse v. Cape Henlopen Sch. Dist.*, 1997 WL 817846, at \*3 (Del. Super. Oct. 28, 1997)).

<sup>8</sup> *MRPC Fin. Mgmt. LLC v. Carter*, 2003 WL 21517977, at \*4 (Del. Super. Jun. 20, 2003).

<sup>9</sup> *Toribio v. Peninsula United Methodist Homes, Inc.*, 2009 WL 153871, at \*2 (Del. Super. Jan. 23, 2009) (citing *Mosley v. Initial Sec.*, 2002 WL 31236207, at \*2 (Del. Super. Ct. Oct. 2, 2002)).

<sup>10</sup> *McCoy v. Occidental Chem. Corp.*, 1996 WL 111126, at \*3 (Del. Super. Feb. 7, 1996).

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if so, what conduct was prohibited under the policy.<sup>11</sup> Second, whether the employee was apprised of the policy and if so, how was he made aware.<sup>12</sup> Knowledge of a company policy can be established by evidence of a written policy, such as an employer's handbook or by previous warning of objectionable conduct.<sup>13</sup>

13. Here the claimant had been warned many times that rude and unprofessional behavior toward fellow employees was unacceptable conduct. The writing on the steno pad was clearly of that nature. The fact that the message was written implies it was meant to be read. The two prong test is met: a policy prohibiting such conduct existed, and the claimant was aware of it. I find that the claimant's factual contentions have no merit. I further find no error on the Board's part in concluding that the offensive message, under all the attendant facts and circumstances, constituted just cause for termination.

14. The decision of the Board is ***affirmed***.

**IT IS SO ORDERED.**

/s/ James T. Vaughn, Jr.  
President Judge

cc: Prothonotary  
Order Distribution  
File

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*